

FILEDUnited States District Court
Western District of Pennsylvania

AUG 02 2019

United States of America,

v.

Frederick Banks,

DEFENDANT

CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA
2:15-cr-00168MOTION FOR RELEASE FROM CUSTODY AND
EXHIBIT IN SUPPORT OF RELEASE FOR
UNLAWFUL PRETRIAL DETENTION

Defendant Frederick Banks, American Indian ("Banks") files the foregoing Motion for Release from Custody and Exhibit, exhibit in support of Release for unlawful pretrial detention and represents:


Banks 48 months of pretrial detention is in violation of the Due Process Clause. See United States v. Omar, 157 F.Supp 3d 707, 718 (MD Tenn 2017) and Banks has not had a shower in 14 months nor Recreation and his Temporary Blankets have not been washed in 8 months in violation of Bell v. Wolfish, 441 U.S. 520, 535 n. 16 (1979) and Due Process. This court ordered Counsel to investigate these pretrial punishments but Counsel referred the matter to the US Marshalls who provided no information on any action they took if any. The situation has not changed. The prepsis has Banks in a Criminal History Category IV which is incorrect (Banks should be a CAT I or II since the violations in the two prior cases is the same conduct charged in the instant case. See USSC § 4A1.2(a)(1) (Term "prior sentence" means prior sentenced "for conduct not part of the instant offense.") The USpo correctly did not add additional points for the violations but failed to recognize that Base wire Fraud / Aggravated Identity Theft violations is the same conduct charged in this case. United States v. Banks, 2014 US Dist LEXIS 153297 (W.D.Pa October 29, 2014); United States v. Banks, 618 Fed. Appx 82 (3d Cir. June 1, 2015). However even in CAT IV Banks top end guideline range which is also the statutory maximum sentence. See Lloyd v. United States, 407 F.3d 608, 612 (3d Cir. 2005) is with good time 44 months. As of August 8, 2019 Banks has served over 48 months (19 offense level minus 6 points for Count 7 one Solicitation & Counts 2 - 6 Attempts under 2X1.1 see 1B1.2(a) = 13 offense level 24 - 30 months plus 24 months for Count 6 = 48 - 54 months minus 10 months good time = 38 - 44 months statutory maximum to serve. Also, 136 non excludable speedy trial Act days has run off the clock

yet Banks is still confined in violation of 18 USC § 3164 (stating that after 90 nonexcludable days a defendant must be released) yet a trial date has still not been set!!!

Banks hereby incorporated his Motion for Release at ECF 1730 and moves the court to discharge him from confinement. Re Attached Exhibit is a response from Deputy Warden Zetser to Banks' request for ACJ to petition this Court to release him. Banks notes that in his motion at ECF 1730 he included Housing options & Conditions of Release, & addressed the danger and flight risk prompted by the Bail Reform Act. Now that 48 months has passed with no trial date being set the Court should release Banks pending trial and allow him to reside at the YMCA, Renewal Center or at one of the other housing options listed in ECF 1730.

WHEREFORE, the Motion for Release should be granted. Banks should be discharged pending trial. The Court should order the government to return to Banks his wallet, keys, money, identification, electronics & documents along with all other requested or warranted relief.

Respectfully Submitted,



Frederick Banks
120759, 8F
Allegheny County Jail
950 Second Avenue
Pittsburgh, PA 15219

DEFENDANT